

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
BEAUMONT DIVISION

LYONDELL CHEMICAL COMPANY,  
*et al.*,

*Plaintiffs,*

v.

ALBEMARLE CORPORATION, *et al.*,

*Defendants.*

CIVIL ACTION NO. 01:01-CV-890  
(Judge Marcia A. Crone)

*Consolidated with 01:02-CV-003*  
*Consolidated with 01:03-CV-0225*

UNITED STATES OF AMERICA,

*Plaintiff,*

v.

EPEC POLYMERS, INC.,

*Defendant.*

CIVIL ACTION NO. 01:02-CV-003  
(Judge Marcia A. Crone)

*Consolidated with 01:01-CV-890*  
*Consolidated with 01:03-CV-0225*

EL PASO TENNESSEE PIPELINE  
COMPANY, *et al.*,

*Plaintiffs,*

v.

CHEVRON USA, INC, *et al.*,

*Defendants.*

CIVIL ACTION NO. 01:03-CV-0225  
(Judge Marcia A. Crone)

*Consolidated with 01:01-CV-890*  
*Consolidated with 01:02-CV-003*

**CONSENT DECREE**

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## **I. BACKGROUND**

WHEREAS, the United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Section 107 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, 42 U.S.C. § 9607, as amended ("CERCLA"), seeking reimbursement of response costs incurred or to be incurred for response actions taken or to be taken at or in connection with the release or threatened release of hazardous substances at the Turtle Bayou Superfund Site, a/k/a the Petro-Chemical Systems, Inc. Superfund Site in Liberty County, Texas ("the Site"). Pursuant to Section 113(g)(2) of CERCLA, 42 U.S.C. § 9613(g)(2), the United States also seeks a declaratory judgment of liability for any future response costs incurred by the United States.

WHEREAS, the defendants that have entered into this Consent Decree ("Settling Defendants") do not admit any liability to Plaintiff arising out of the transactions or occurrences alleged in the complaint.

WHEREAS, the Settling Defendants have settled all claims with Private Plaintiffs Lyondell Chemical Company and Atlantic Richfield Company, as well as all claims with Third Party Plaintiffs El Paso Tennessee Pipeline Company, EPEC Corporation, EPEC Polymers, Inc. and Tennessee Gas Pipeline Company for a total of \$369,000.00.

WHEREAS, the United States and Settling Defendants agree, and this Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith, that settlement of this matter will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

THEREFORE, with the consent of the Parties to this Decree, it is ORDERED,  
ADJUDGED, AND DECREED:

## **II. JURISDICTION**

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345 and 1651 and 42 U.S.C. § 9607 and 9613(b) and also has personal jurisdiction over Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaints in this consolidated action, Settling Defendants waive all objections and defenses that they may have to jurisdiction of the Court or to venue in this District. Settling Defendants consent to and shall not challenge entry of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

## **III. PARTIES BOUND**

2. This Consent Decree is binding upon the United States, and upon Settling Defendants and their heirs, successors and assigns. Any change in ownership or corporate or other legal status, including, but not limited to, any transfer of assets or real or personal property, shall in no way alter the status or responsibilities of Settling Defendants under this Consent Decree.

## **IV. DEFINITIONS**

3. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in any appendix attached hereto, the following definitions shall apply:

- a. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. § 9601, *et seq.*
- b. "Consent Decree" shall mean this Consent Decree and all appendices attached hereto. In the event of conflict between this Consent Decree and any appendix, this Consent Decree shall control.
- c. "Day" shall mean a calendar day. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.
- d. "DOJ" shall mean the United States Department of Justice and any successor departments, agencies or instrumentalities of the United States.
- e. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities of the United States.
- f. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.
- g. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.
- h. "Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral or an upper or lower case letter.
- i. "Parties" shall mean the United States and the Settling Defendants.

- j. "Plaintiff" shall mean the United States.
- k. "Private Plaintiffs" shall mean Lyondell Chemical Company and Atlantic Richfield Company
- l. "RCRA" shall mean the Solid Waste Disposal Act, 42 U.S.C. § 6901, *et seq.* (also known as the Resource Conservation and Recovery Act).
- m. "Record of Decision" or "ROD" shall mean the EPA Record of Decision relating to the Site signed on September 6, 1991, as amended by the ROD Amendment dated April 30, 1998, by the Regional Administrator, EPA Region VI, or his/her delegate, and all attachments thereto, as well as any future amendments to the ROD, and/or a new ROD which may address the CR 126 West Area and/or modify the remedy for the Bayou Disposal Area.
- n. "Remedial Action" shall mean those activities, except for operation and maintenance, to implement the EPA selected remedy for the Bayou Disposal Area, the Main Waste Area, the Office Trailer Area, the Power Easement Area, the West Road Area, and the CR 126 West Area, and generally shown on the map included in Appendix B.
- o. "Section" shall mean a portion of this Consent Decree identified by a Roman numeral.
- p. "Settlement Amount" shall mean the amount of money that each of the Settling Defendants agrees to pay, as shown in Appendix A.
- q. "Settling Defendants" shall mean the following defendants in the consolidated action: 1) Celanese, Ltd. and CNA Holdings f/k/a Hoechst Celanese

Corporation; 2) Cook Composites and Polymers Company; 3) E.R. Carpenter, L.P., Successor in Interest to Carpenter Chemical Company; 4) Hercules Incorporated; 5) Texaco, Inc., as predecessor to Huntsman Petrochemical Corporation; 6) NL Industries, f/k/a National Lead Company; 7) Rexene Corporation, n/k/a Huntsman Polymers Corporation; 8) Vacuum Tanks, Inc.

r. "Site" shall mean the Turtle Bayou Superfund Site, a/k/a the Petro-Chemical Systems, Inc. Superfund site, an unauthorized, unpermitted waste disposal site located in Liberty County, Texas, encompassing approximately 500 acres, and generally shown on the map included in Appendix B.

s. "Third Party Plaintiffs" shall mean El Paso Tennessee Pipeline Company, EPEC Corporation, EPEC Polymers, Inc. and Tennessee Gas Pipeline Company.

t. "United States" shall mean the United States of America, including its departments, agencies and instrumentalities.

u. "Waste Material" shall mean (1) any "hazardous substance" under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); and (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27).

#### **V. STATEMENT OF PURPOSE**

4. By entering into this Consent Decree, the mutual objective of the Parties is for Settling Defendants to make a cash payment to address their alleged liability for the Site as provided in the Covenant Not to Sue by Plaintiff in Section VIII, and subject to the Reservations of Rights by United States in Section IX.

## **VI. PAYMENT OF RESPONSE COSTS**

5. Within thirty (30) days of lodging of this Consent Decree, Settling Defendants shall pay to the EPA Hazardous Substance Superfund a total of \$37,000 (the Settlement Amount). Payments by each of the Settling Defendants shall be made in the amount listed in Appendix A (Settlement Payment Due to the United States).

6. Payment shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number 2002V00059, the EPA Region and Site Spill ID Number 06-81, and DOJ Case Number 90-11-3-709/1. Payment shall be made in accordance with instructions provided to Settling Defendants by the Financial Litigation Unit of the U.S. Attorney's Office in the Eastern District of Texas following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. Eastern Time shall be credited on the next business day.

7. At the time of payment of the Settlement Amount, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to EPA Cost Recovery in accordance with Section XIV. Such notice shall reference the EPA Region and Site Spill ID Number 06-81, DOJ Case Number 90-11-3-709/1, and the Civil Action Number.

8. The total amount to be paid pursuant to Paragraph 5 shall be deposited in the Petro-Chemical Systems, Inc. Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.



9. Settling Defendants shall pay a total of \$369,000 to Private Party Plaintiffs and Third Party Plaintiffs as set forth in Appendix A (Total Settlement Payment to Private Plaintiffs and Total Settlement Payment to Third Party Plaintiffs). Settling Defendants shall provide the United States with proof that they have paid the First Payments to Private Plaintiffs and Third Party Plaintiffs totaling \$203,000 (as set forth in Appendix A) within ten (10) days of lodging of this Consent Decree. The remainder of the settlement funds payable to the Private Plaintiffs and to the Third Party Plaintiffs (the 2<sup>nd</sup> Payments) in the amounts listed in Appendix A shall be paid within ten (10) days of the entry of the Consent Decree. The funds will be used to reimburse response costs related to the Site. Within twenty-five (25) days of entry of this Consent Decree, Private Plaintiffs and Third Party Plaintiffs shall notify the United States whether they received the funds and, if so, the exact amount received from each Settling Defendant.

10. By signing this Consent Decree, each Settling Defendant certifies, individually, that, to the best of its knowledge and belief, it has:

a. Conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately produced for inspection consistent with the requirements of Federal Rule of Civil Procedure 34 all information currently in its possession, or in the possession of its officers, directors, employees, contractors, or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, contaminant at or in connection with the Site;

b. Not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the

Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. Fully complied with any and all EPA requests for information regarding the Site pursuant to Section 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

This certification inures only to the benefit of the United States, and not to any other entity.

#### **VII. FAILURE TO COMPLY WITH CONSENT DECREE**

11. Interest on Late Payments. If any Settling Defendant fails to make any payment under Paragraph 5 by the required due date, Interest shall continue to accrue on the unpaid balance through the date of payment.

12. Stipulated Penalty.

a. If any amounts due under Paragraph 5 or Paragraph 9 are not paid by the required due date, the Settling Defendant who has failed to pay shall be in violation of this Consent Decree and shall pay, as a stipulated penalty, in addition to the interest required by Paragraph 12, \$3000.00 per violation per day that such payment is late.

b. Stipulated penalties are due and payable within thirty (30) days of the date of the demand for payment of the penalties by EPA. All payments to EPA under this Paragraph shall be identified as "stipulated penalties" and shall be made by certified or cashier's check made payable to "EPA Hazardous Substance Superfund." The check, or a letter accompanying the check, shall reference the name and address of the party(ies) making payment, the Site name, the EPA Region and Site Spill ID Number 06-81, DOJ Case Number 90-11-3-709/1, and the Civil Action Number, and shall be sent to:

U.S. EPA, Superfund Accounting  
P.O. Box 360582M, Pittsburgh, Pennsylvania 15251  
ATTN: COLLECTION OFFICER FOR SUPERFUND

c. At the time of each payment, Settling Defendants shall send notice that payment has been made to EPA and DOJ in accordance with Section XIV (Notices and Submissions) and to EPA Cost Recovery in accordance with Section XIV. Such notice shall reference the EPA Region and Site Spill ID Number 06-81, DOJ Case Number 90-11-3-709/1, and the Civil Action Number.

d. Penalties shall accrue as provided in this Paragraph regardless of whether EPA has notified Settling Defendants of the violation or made a demand for payment, but need only be paid upon demand. All penalties shall begin to accrue on the day after payment is due and shall continue to accrue through the date of payment. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

13. If the United States brings an action to enforce this Consent Decree, Settling Defendants shall reimburse the United States for all costs of such action, including but not limited to costs of attorney time.

14. Payments made under this Section shall be in addition to any other remedies or sanctions available to the United States by virtue of Settling Defendants' failure to comply with the requirements of this Consent Decree.

15. The obligations of Settling Defendants to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the failure of any one or more Settling Defendants to make the payments required under this Consent Decree, the remaining

Settling Defendants shall be responsible for such payments.

16. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive payment of any portion of the stipulated penalties that have accrued pursuant to this Consent Decree. Payment of stipulated penalties shall not excuse Settling Defendants from payment as required by Section VI or from performance of any other requirements of this Consent Decree.

#### **VIII. COVENANT NOT TO SUE BY PLAINTIFF**

17. Covenant Not to Sue by United States. Except as specifically provided in Section IX (Reservation of Rights by United States), the United States covenants not to sue or to take administrative action against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), with regard to the Site. With respect to present and future liability, this covenant not to sue shall take effect upon receipt by EPA of all payments required by Section VI (Payment of Response Costs) and any amount due under Section VII (Failure to Comply with Consent Decree). This covenant not to sue is conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. This covenant not to sue extends only to Settling Defendants and does not extend to any other person.

#### **IX. RESERVATION OF RIGHTS BY UNITED STATES**

18. United States' Pre-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (a) to perform response actions

relating to the Site, or (b) to reimburse the United States for additional costs of response if, prior to issuance of EPA's certification of completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action is not protective of human health or the environment.

19. United States' Post-certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (a) to perform response actions relating to the Site, or (b) to reimburse the United States for additional costs of response if, subsequent to issuance of EPA's certification of completion of the Remedial Action:

(1) conditions at the Site, previously unknown to EPA, are discovered, or

(2) information, previously unknown to EPA, is received, in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action is not protective of human health or the environment.

20. For purposes of Paragraph 18 of this Section, the information and the conditions known to EPA shall include only that information and those conditions as set forth in the 1991 ROD and its administrative record, the 1998 ROD Amendment and its administrative record, and the October 2000 Five-Year Review Report. For purposes of Paragraph 19 of this Section, the information and the conditions known to EPA shall include only that information and those conditions as set forth in the ROD and its administrative record.

21. General reservation of rights. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 18. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- a. liability for failure of Settling Defendants to meet a requirement of this Consent Decree;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;
- d. liability, based upon Settling Defendants' ownership or operation of the Site, or upon Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal, of a Waste Material at or in connection with the Site, after signature of this Consent Decree by Settling Defendants; and

e. liability arising from the past, present, or future disposal, release or threat of release of Waste Materials outside of the Site.

**X. COVENANT NOT TO SUE BY SETTling DEFENDANTS**

22. Settling Defendants covenant not to sue and agree not to assert any claims or causes of action against the United States, or its contractors or employees, with respect to the Site or this Consent Decree, including but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of Texas, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; or

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 24 (Waiver of Claims) and Paragraph 28 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 18, 19, and 21 (c) - (e), but only to the extent that Settling Defendants' claims arise from the same response action or response costs that the United States is seeking pursuant to the applicable reservation.

23. Nothing in this Consent Decree shall be deemed to constitute approval or preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

24. Settling Defendants agree not to assert any claims or causes of action that they may have for all matters relating to the Site, including for contribution, against any other person. This waiver shall not apply with respect to any defense, claim, or cause of action that a Settling Defendant may have against any person if such person asserts a claim or cause of action relating to the Site against such Settling Defendant.

#### **XI. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION**

25. Except as provided in Paragraph 24, nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this Decree may have under applicable law. Except as provided in Paragraph 24, the Parties expressly reserve any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which they may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto.

26. The Parties agree, and by entering this Consent Decree this Court finds, that Settling Defendants are entitled, as of the date of entry of this Consent Decree, to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for “matters addressed” in this Consent Decree. The “matters addressed” in this Consent Decree are all response actions taken or to be taken and all response costs incurred or to



be incurred, at or in connection with the Site, by the United States or any other person. The “matters addressed” in this Consent Decree do not include those response costs or response actions as to which the United States has reserved its rights under this Consent Decree (except for claims for failure to comply with this Decree), in the event that the United States asserts rights against Settling Defendants coming within the scope of such reservations.

27. Each Settling Defendant agrees that, with respect to any suit or claim for contribution brought by it for matters related to this Consent Decree, it will notify EPA and DOJ in writing no later than sixty (60) days prior to the initiation of such suit or claim. Each Settling Defendant also agrees that, with respect to any suit or claim for contribution brought against it for matters related to this Consent Decree, it will notify EPA and DOJ in writing within ten (10) days of service of the complaint or claim upon it. In addition, each Settling Defendant shall notify EPA and DOJ within ten (10) days of service or receipt of any Motion for Summary Judgment, and within ten (10) days of receipt of any order from a court setting a case for trial, for matters related to this Consent Decree.

28. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the Covenant Not to Sue by Plaintiff set forth in Section VIII.

## **XII. ACCESS TO INFORMATION**

29. Settling Defendants shall provide to EPA, upon request, copies of all records, reports, or information (hereinafter referred to as "records") within their possession or control or that of their contractors or agents relating to activities at the Site, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Site.

30. Confidential Business Information and Privileged Documents.

a. Settling Defendants may assert business confidentiality claims covering part or all of the records submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), and 40 C.F.R. 2.203(b). Records determined to be confidential by EPA will be accorded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies records when they are submitted to EPA, or if EPA has notified Settling Defendants that the records are not confidential under the standards of Section 104(e)(7) of CERCLA or 40 C.F.R. Part 2, Subpart B, the public may be given access to such records without further notice to Settling Defendants.

b. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege in lieu of providing records, they shall provide Plaintiff with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records

created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

31. No claim of confidentiality shall be made with respect to any data, including but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other records evidencing conditions at or around the Site.

### **XIII. RETENTION OF RECORDS**

32. Until ten (10) years after the entry of this Consent Decree, each Settling Defendant shall preserve and retain all records now in its possession or control, or which come into its possession or control, that relate in any manner to response actions taken at the Site or the liability of any person under CERCLA with respect to the Site, regardless of any corporate retention policy to the contrary.

33. After the conclusion of the document retention period in the preceding paragraph, Settling Defendants shall notify EPA and DOJ at least ninety (90) days prior to the destruction of any such records, and, upon request by EPA or DOJ, Settling Defendants shall deliver any such records to EPA. Settling Defendants may assert that certain records are privileged under the attorney-client privilege or any other privilege recognized by federal law. If Settling Defendants assert such a privilege, they shall provide Plaintiff[s] with the following: 1) the title of the record; 2) the date of the record; 3) the name and title of the author of the record; 4) the name and title of each addressee and recipient; 5) a description of the subject of the record; and 6) the privilege asserted. However, no records created or generated pursuant to the requirements of this or any other settlement with the United States shall be withheld on the grounds that they are privileged.

#### **XIV. NOTICES AND SUBMISSIONS**

34. Whenever, under the terms of this Consent Decree, notice is required to be given or a document is required to be sent by one party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA, DOJ, and Settling Defendants, respectively.

As to the United States:

As to DOJ:

Chief, Environmental Enforcement Section  
Environment and Natural Resources Division  
U.S. Department of Justice (DJ # 90-11-3-709/1)  
P.O. Box 7611  
Washington, D.C. 20044-7611

As to EPA:

ANNE FOSTER  
Assistant Regional Counsel (6RC-S)  
U.S. Environmental Protection Agency  
Region VI  
1445 Ross Avenue  
Dallas, Texas 75202

As to EPA Cost Recovery:

Chief, Superfund Cost Recovery Section  
U.S. Environmental Protection Agency  
Region VI (6SF-AC)  
1445 Ross Avenue  
Dallas, Texas 75202-2733

As to Each Settling Defendant:

Notices shall be sent to the Agent Authorized to Accept Service on Behalf of Each Settling Defendant, as listed on Each Settling Defendant's Signature Page.

#### **XV. RETENTION OF JURISDICTION**

35. This Court shall retain jurisdiction over this matter for the purpose of interpreting and enforcing the terms of this Consent Decree.

#### **XVI. INTEGRATION/APPENDICES**

36. This Consent Decree and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Consent Decree. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Consent Decree. The following appendices are attached to and incorporated into this Consent Decree: "Appendix A" is the complete list of Settling Defendants and Settlement Amounts; "Appendix B" is the map of the Site and a depiction of Bayou Disposal Area, the Main Waste Area, the Office Trailer Area, the Power Easement Area, the West Road Area, and the CR 126 West Area of the Site.

#### **XVII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT**

37. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that this Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

38. If for any reason this Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

### **XVIII. SIGNATORIES/SERVICE**

39. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice certifies that he or she is authorized to enter into the terms and conditions of this Consent Decree and to execute and bind legally such Party to this document.

40. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree, unless the United States has notified Settling Defendants in writing that it no longer supports entry of the Consent Decree.

41. Each Settling Defendant shall identify, on the attached signature page, the name and address of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including but not limited to, service of a summons.

### **XIX. FINAL JUDGMENT**

42. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute the final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS \_\_\_\_\_ DAY OF \_\_\_\_\_, 200\_\_.

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Honorable Marcia A. Crone  
United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, *consolidated with*, 01:02-CV-003, *consolidated with*, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

**FOR PLAINTIFF UNITED STATES OF AMERICA:**

December 22, 2005  
Date

SUE ELLEN WOOLDRIDGE  
Assistant Attorney General  
Environment and Natural Resources Division  
United States Department of Justice

DECEMBER 21, 2005  
Date

SCOTT E. STEWART  
Trial Attorney  
Environmental Enforcement Section  
Environment and Natural Resources Division  
United States Department of Justice  
P.O. Box 7611  
Washington, D.C. 20044-7611  
(202) 514-5508

MATTHEW D. ORWIG  
United States Attorney  
Eastern District of Texas

MICHAEL LOCKHART  
Assistant United States Attorney  
Eastern District of Texas  
350 Magnolia Avenue, Suite 350  
Beaumont, Texas 77657  
(409) 839-2538



**FOR THE ENVIRONMENTAL PROTECTION AGENCY:**

\_\_\_\_\_  
Date

\_\_\_\_\_  
SAMUEL COLEMAN, P.E.  
Director, Superfund Division  
U.S. Environmental Protection Agency  
Region VI  
1445 Ross Avenue  
Dallas, Texas 75202-2733

\_\_\_\_\_  
Date

\_\_\_\_\_  
ANNE FOSTER  
Assistant Regional Counsel (6RC-S)  
U.S. Environmental Protection Agency  
Region VI  
1445 Ross Avenue  
Dallas, Texas 75202  
(214) 665-2169

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Carpenter Urethanes I, LLC - General Partner of E.R. Carpenter, L.P.

Date: \_\_\_\_\_

\_\_\_\_\_  
HOBIE CLAIBORNE

Secretary

Carpenter Urethanes I, LLC - General Partner of E.R. Carpenter,

L.P.

Carpenter Company Legal Department

5016 Monument Avenue

Richmond, Virginia 23230

804-359-0800

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: HOBIE CLAIBORNE

Title: Secretary

Company: Carpenter Urethanes I, LLC - General Partner of E.R. Carpenter,  
L.P.

Address: 5016 Monument Avenue  
Richmond, Virginia 23230

Telephone: 804-359-0800

Email: [hobie.claiborne@carpenter.com](mailto:hobie.claiborne@carpenter.com)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Celanese, Ltd. and CNA Holdings, Inc.

Date: \_\_\_\_\_

\_\_\_\_\_  
RICHARD HANLON  
Senior Manager, Remediation  
Celanese International Corporation  
550 U.S. Highway 202/206, Suite 310  
Bedminster, New Jersey 07921  
908-901-4579

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:  
Title:  
Company: CT Corporation System  
Address: 350 North St. Paul Street  
Dallas, Texas 75201  
Telephone: 214-979-1172  
Email:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Cook Composites and Polymers Company

Date: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL GROMACKI  
Director of Quality, Safety & Environment  
Cook Composites and Polymers Company  
P.O. Box 419389  
Kansas City, Missouri 64141-6389  
816-391-6011

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: MICHAEL GROMACKI  
Title: Director of Quality, Safety & Environment  
Company: Cook Composites and Polymers Company  
Address: P.O. Box 419389  
Kansas City, Missouri 64141-6389  
Telephone: 816-391-6011  
Email: [gromacki@ccponline.com](mailto:gromacki@ccponline.com)

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Hercules Incorporated

Date: \_\_\_\_\_

\_\_\_\_\_  
THOMAS H. STRANG  
Vice President for Safety, Health, Environment  
and Regulatory Affairs  
Hercules Incorporated  
Hercules Plaza, 1313 N. Market Street  
Wilmington, Delaware 19894

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:  
Title: General Counsel  
Company: Hercules Incorporated  
Address: Hercules Plaza, 1313 N. Market Street  
Wilmington, Delaware 19894  
Telephone: 302-594-5000  
Email:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Texaco, Inc., as predecessor to Huntsman Petrochemical Corporation

Date: \_\_\_\_\_

NAME: \_\_\_\_\_

Assistant Secretary  
Texaco, Incorporated  
6001 Bollinger Canyon Road  
San Ramon, California 94583  
925-842-1000

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name:

Title:

Company: Corporation Service Company, d/b/a CSC-Lawyers Incorporating  
Service Company

Address: 701 Brazos Street  
Austin, Texas 78701

Telephone: 800-927-9800

Email:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT NL Industries

Date: \_\_\_\_\_

\_\_\_\_\_  
ROBERT D. GRAHAM  
Vice President and General Counsel  
NL Industries  
5430 LBJ Freeway, Suite 1700  
Dallas, Texas 75240  
972-233-1700

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: ROBERT D. GRAHAM  
Title: Vice President and General Counsel  
Company: NL Industries  
Address: 5430 LBJ Freeway, Suite 1700  
Dallas, Texas 75240  
Telephone: 972-233-1700  
Email:

THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Rexene Corporation n/k/a Huntsman Polymers Corporation

Date: \_\_\_\_\_

\_\_\_\_\_  
MICHAEL J. KERN

Executive Vice-President, Environmental Health and Safety  
Rexene Corporation n/k/a Huntsman Polymers Corporation  
10003 Woodloch Forest Drive  
The Woodlands, Texas 77380

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: LON TULLOS  
Title:  
Company: Huntsman Petrochemical Corporation  
Address: 10003 Woodloch Forest Drive  
The Woodlands, Texas 77380  
Telephone: 281-719-6000  
Email:



THE UNDERSIGNED PARTY enters into this Consent Decree in the matter of Lyondell Chemical Company, et al. v. Albemarle Corporation, et al., Civil Action No. 01:01-CV-890, consolidated with, 01:02-CV-003, consolidated with, 01:03-CV-0225, relating to the Petro-Chemical Systems, Inc. (Turtle Bayou) Superfund Site.

FOR DEFENDANT Vacuum Tanks, Incorporated

Date: \_\_\_\_\_

\_\_\_\_\_  
JAN DECOUX  
President  
Vacuum Tanks, Incorporated  
3026 Manila Lane  
Houston, Texas 77043

Agent Authorized to Accept Service on Behalf of Above-signed Party:

Name: Michael L. Brown  
Title: Attorney  
Company: Brown & Adkins  
Address: 712 Main, Suite 2120  
Houston, Texas 77002  
Telephone: 7-3-216-2444  
Email: attorneybrown@msn.com

# APPENDIX A

Settling Defendants	Settlement Payment Due to the United States	Total Settlement Payment to Private Plaintiffs	1st Payment to Private Plaintiffs	2nd Payment to Private Plaintiffs	Total Settlement Payment to Third Party Plaintiffs	1st Payment to Third Party Plaintiffs	2nd Payment to Third Party Plaintiffs
A. Celanese	\$8,000	\$72,000	\$40,000	\$32,000	\$5,000	\$2,500	\$2,500
B. Cook Composites	\$3,500	\$31,500	\$17,500	\$14,000			
C. Carpenter	\$2,500	\$22,500	\$12,500	\$10,000	\$10,000	\$5,000	\$5,000
D. Hercules	\$2,500	\$22,500	\$12,500	\$10,000	\$2,500	\$1,250	\$1,250
E. Huntsman Petrochemical	\$5,000	\$45,000	\$25,000	\$20,000	\$7,500	\$3,750	\$3,750
F. NL Industries	\$3,500	\$31,500	\$17,500	\$14,000			
G. Rexene	\$2,500	\$22,500	\$12,500	\$10,000	\$10,000	\$5,000	\$5,000
H. VTI	\$9,500	\$85,500	\$47,500	\$38,000	\$1,000	\$500	\$500
Total	\$37,000	\$333,000	\$185,000	\$148,000	\$36,000	\$18,000	\$18,000

